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50TH SESSION ON PANDEMIC AND AUTHORITARIANISM

**The liability of Bolsonaro's government for the systematic violations
of the fundamental rights of the Brazilian people perpetrated
through the policies imposed during the COVID-19 pandemic**

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2. Development of the procedure

The Permanent Peoples' Tribunal (PPT) formally accepted the request submitted by the “Dom Paulo Evaristo Arns” Commission for the Defense of Human Rights – the Arns Commission –, the Articulation of the Indigenous Peoples of Brazil – APIB, Black Coalition for Rights, and Public Services International – PSI Brazil, for a session to be held for the trial of Mr. Jair Messias Bolsonaro, President of the Federative Republic of Brazil, based on the indictment minute (Annex 1) submitted by these organizations to the Tribunal, following the instruction deadline provided for in the PPT Statute, in April 2022. The present trial is concerned with the systematic violations of the human and fundamental rights of Brazilian populations perpetrated through the policies adopted in the management of the COVID-19 pandemic in the country.

The core of the indictment, presented by the aforementioned organizations representing Brazilian civil society, can be summarized as follows: by profoundly abusing his institutional powers, Mr. Jair Messias Bolsonaro, invested with the duties and attributions as President of the Republic of Brazil, transformed a serious health emergency, which called for adequate and well-targeted protection measures, into an opportunity and an instrument to attack populations historically discriminated against and considered 'disposable' – the case of the Indigenous peoples, of millions of Black citizens, and quilombola communities –, at the same time accentuating the inequality, neglect, and violence already widespread among the most vulnerable groups in the country, rendering it difficult or impossible for them to access public services, thus violating their right to life and the dignity of the human person.

The consequences of these violations of fundamental rights have been demonstrated in the country's shocking COVID-19 mortality rates, with thousands of deaths daily. This situation is characterized by a lack of administrative, political, economic, and cultural support for the structures, resources, and health professionals, in all phases of the pandemic – the policy regarding coronavirus vaccines is a concrete and, at the same time, a symbolic example of this situation.

With the decision to proceed with the trial session process, the Permanent Peoples' Tribunal recognizes that the criminal charges formulated and thoroughly documented in the indictment correspond to its competencies as described generically in the articles of its founding Statute¹, the Universal Declaration of the Rights of Peoples², as well as more specifically in the legal provisions

¹ Permanent Peoples' Tribunal, Statute, 1979, <http://permanentpeopletribunal.org/wp-content/uploads/2016/06/statute.pdf>

² Universal Declaration of the Rights of Peoples, Algiers, 4 July 1976, <http://permanentpeopletribunal.org/wp-content/uploads/2016/06/Carta-di-algeri-EN-2.pdf>

of its new Statute³ (especially Article 3, which deals with crimes against humanity).

In observance of its methodology – extensively tested throughout the course of the experience that has accumulated since the beginning of its activities in Bologna in 1979, and through 49 cases and related sentences – the Permanent Peoples' Tribunal ensured that the present indictment had to be based primarily on direct evidence of the violations, with the support of doctrinal reports, taking into consideration the extensive documentation that has been produced on the same and similar topics by various actors and organizations of Brazilian society. Of evident and particular importance for the analysis and qualification of the evidence considered in the formulation of this judgment are the two main sources of information to which this Court has had access, each with references to dozens of other sources:

- The Federal Senate's Final Report of the Parliamentary Commission of Inquiry on the Pandemic (2021)
- Communications from the Articulation of Indigenous Peoples of Brazil, the Arns Commission, and the Collective of Human Rights Advocacy to the Office of the Prosecutor of the International Criminal Court, regarding the crimes committed by President Jair Bolsonaro against Indigenous peoples in Brazil, between 2019 and 2021.

The two public hearings of the 50th Session of the Permanent Peoples' Tribunal took place in the Noble Hall of the Law School of the University of São Paulo, in São Paulo, on May 24 and 25, 2022, as per the program informed in Annex 2.

The proceedings of the Tribunal, from the acceptance of the indictment to the public hearings, were formally, and with due notice, forwarded to Mr. Jair Messias Bolsonaro and the members of his government mentioned in the indictment, inviting them to be present at the session and to exercise their right of defense.

The panel of judges for this 50th Session of the PPT, participating remotely in the entire process described above, is composed of: Luigi Ferrajoli (Italy), President of the Jury, former Italian magistrate, professor emeritus at Roma Tre University; Alejandro Macchia (Argentina), physician and epidemiologist; Sir Clare Roberts (Antigua and Barbuda), former Minister of Justice, former president of the Inter-American Commission on Human Rights and former judge of the Supreme Court of the Eastern Caribbean; Eugenio Raúl Zaffaroni (Argentina), a former member of the Supreme Court of Argentina and former judge of the Inter-American Court of Human Rights – OAS BRAZIL; Kenarik Boujakian (Brazil), former appellate judge of the Court of Justice of São Paulo; Luis Moita (Portugal), professor at the Autonomous University of Lisbon, an expert in peace and war studies; Nicoletta

³ Permanent Peoples' Tribunal, Statute, 2018, http://permanentpeopletribunal.org/wp-content/uploads/2019/05/Statute-of-the-PPT_ENG_FINAL.pdf

Dentico (Italy), journalist, writer, and global health expert; Rubens Ricupero (Brazil), ambassador, former minister, former Secretary-General of the United Nations Conference on Trade and Development; Vercilene Dias Kalunga (Brazil), quilombola leader and lawyer; and Baroness Vivien Stern (United Kingdom), member of the House of Lords, an expert in criminal law and human rights.

2. Facts, reports, and testimonies produced and publicly known

The Permanent Peoples' Tribunal held two hybrid sessions on May 24 and 25, 2022, with witnesses and prosecuting attorneys meeting face-to-face in the main hall of the University of São Paulo Law School and judges meeting virtually, ensuring synchronous interaction between witnesses, attorneys, and judges.

In these two hybrid sessions, the indictment minute was presented by Eloísa Machado, Sheila Carvalho, and Maurício Terena, lawyers representing the complainant organizations, and witnesses were heard on the facts presented.

The first set of testimonies referred to epidemiological and public health studies on the COVID-19 pandemic and, in particular, its impact on most vulnerable populations. Witness Professor Deisy Ventura brought to the attention of the Tribunal the timeline of acts committed by Mr. Jair Bolsonaro, as head of the federal executive branch, in the elaboration and implementation of a deliberate policy to spread COVID-19. The senator of the Republic, Mr. Humberto Costa, reported to the Tribunal the main points investigated by the Parliamentary Commission of Inquiry “*CPI da Pandemia*, in Portuguese”, which accuses Mr. Jair Bolsonaro, as president of the Republic, of a series of crimes foreseen in the domestic and international legislation. Physician Jurema Werneck brought research data on preventable deaths during the COVID-19 pandemic in Brazil, as well as on the disproportionate impact of higher mortality rates on the poor and Black population.

The second set of testimonies was dedicated to the hearing of representatives from the main union entities representing health professionals in the country: Valdirlei Castagna, president of the National Confederation of Health Workers (*Confederação Nacional dos Trabalhadores da Saúde – CNTS*, in Portuguese); Benedito Augusto, president of the National Confederation of Social Security Workers (*Confederação Nacional dos Trabalhadores em Seguridade Social – CNTSS*, in Portuguese) and Shirley Marshal, president of the National Federation of Nurses (*Federação Nacional dos Enfermeiros – FNE*, in Portuguese). These witnesses reported how the acts of Mr. Jair Bolsonaro, as President of the Republic of Brazil, prevented an adequate public policy to confront the COVID-19 pandemic due to a lack of administrative, political, and economic support for health structures, resources, and health professionals.

Finally, the third set of testimonies was dedicated to statements from Indigenous leaders. Lindomar Terena, Indigenous of the Terena people, and Auricélia Fonseca, Indigenous of the Arapium people of the Brazilian Amazon and coordinator of the Indigenous Council of the Tapajós and Arapiuns Rivers (*Conselho Indígena dos Rios Tapajós e Arapiuns*, in Portuguese), described how the acts of Mr. Jair Bolsonaro have aggravated the scenario of discrimination against Indigenous peoples, affecting their

lands, their health, and their survival.

The testimonies were accompanied and supplemented with research reports and additional answers to questions from the Tribunal's judges.

3. The rationale for the decision

- (a) The indictment presented to the Tribunal brings a set of unlawful facts, under domestic and international law, pointing out the consistencies in the planning and execution of such unlawful actions by the government of the Federative Republic of Brazil headed by its president, Mr. Jair Bolsonaro. A governmental action, by its nature, involves a plurality of people who necessarily concur with it. In light of this, it is necessary to determine whether the intervention carried out by the aforementioned president takes place as an author or as an accomplice to the crimes.
- (b) Once this is determined, it is necessary to distinguish whether it is a plurality of illegal acts or a single illegal act.
- (c) In this regard, the prosecution cites the President's expressions as demonstrating a political position openly contrary to human rights. However, the Tribunal must carefully examine these public and continuous manifestations of the highest executive authority of the Republic in order to determine whether they are indeed limited to a mere ideological discourse by the speaker or whether, perhaps, they constitute an unlawful act, since everything seems to indicate that this is a violation of human rights independently.
- (d) The indictment focuses on the political choices regarding the COVID-19 pandemic made by public authorities and headed by the president. Its analysis requires not only the objective verification of causality and the extent of the damage caused, as well as the possible subjective responsibility (intent or negligence, relevance or irrelevance of intent) in order, when confirmed, to determine the legal classification of the conduct, given that, if the allegations of the prosecution are found to be correct, everything indicates that it is a crime against humanity.
- (e) Finally, it is necessary to determine whether this second illegal act only deserves the classification of a crime against humanity or whether it should, in theory, also be classified as a crime of genocide, taking into account its specific effects on the Indigenous and Black population of Brazil.

a. The perpetration of the acts

The illegal acts that come to the attention of the Tribunal are the result of the acts of the Federal Government and, therefore, of the intervention or concurrence of a plurality of persons. The condition of criminal authorship, in any illegal act in which more than one person concurs, is different from simple participation or complicity because the author is the person who, according to a specific plan for the execution of the fact, always had control of the act, that is, without his personal contribution, the criminal fact could not have been practiced or consummated. In other words, the author is the one who, without his or her contribution, could at any time overthrow the concrete plan for the act,

interrupting its execution or preventing its result.

In the set of facts presented to the Tribunal, corroborated by the multiple means of proof provided, Jair Bolsonaro's condition as the author of the crime is unquestionable, given that he heads a presidential system of government (Article 79 of the Constitution of the Federative Republic of Brazil) and is responsible for the "exercise, with the assistance of the ministers of State, the higher management of the federal administration" (Article 84, section II). In exercising these powers, which clearly gave him control over the acts, the president had the ability to decide on the health policy in the course of the COVID-19 pandemic, which is the focus of the indictment.

b. A plurality of unlawful acts or criminal offenses?

It is fully proven that the health policy promoted by the government led by President Jair Bolsonaro was decided and executed as an expression of a single governmental will, that is, that there is a decision-making unity (a single decision). This policy has caused multiple harmful results, but this plurality of results does not legally configure a plurality of acts. In this sense, the health policy regarding the pandemic gives rise to a single unlawful act, provided that, in addition to the decision-making unity, a unity in the legal reproach can also be acknowledged which, as we shall see, is provided by the concept of crime against humanity.

This unity of the unlawful act is not removed by the fact that it simultaneously violates several norms, that is, that it can be legally classified in a plural way, which in fact should be decided in this case, since the prosecution understands that the decisions regarding health policy constitutes a crime against humanity and, at the same time, may come to constitute a crime of genocide. These would not be independent acts, but potential different legal qualifications of a single act.

c. Public incitement to discrimination

However, two independent acts are present in this case, and even if the gravity of the health policy decision obscures the perception of a prior or concomitant fact, this cannot escape the Tribunal's attention.

The health policy decision in the course of the COVID-19 pandemic would be a single illegal act with two, in theory, competing legal classifications (crime against humanity and genocide). But the Tribunal must not fail to note that the speeches made publicly by Jair Bolsonaro in his position as President of the Republic constitute, in themselves, another international offense.

In fact: as President of the Republic, Jair Bolsonaro encourages violence and hate speech, encourages the proliferation of weapons, invites people to be killed like "cockroaches", and promotes the aggravation of already serious discrimination in society (misogynist, classist, racist, and homophobic discrimination).

All this is ostensibly public knowledge since it is constantly recorded and disseminated by the national and foreign media, to the extent that not a week goes by without news of some of these contemptuous speeches against the most basic human rights.

Such public statements are not supported by freedom of speech and thought. It is obvious that human rights can be subject to criticism – including public criticism – because ideological disagreement is something to be valued. However, the incitement to commit crimes – punishable even by domestic law – by any citizen and, of course, also by the President of the Republic, aware of the greater impact of his speech, is far from being an ideological disagreement. The very racial slurs that Bolsonaro frequently incurs are punished by domestic law (Article 140 of the Brazilian Criminal Code).

The policy that seeks the support of sectors of public opinion through the invention of enemies in order to stigmatize has long been known as populist or *völkisch*. This is not to condemn a mere political choice, but rather to recognize that when the political choice aligns itself with this strategy, in an already highly stratified and multiethnic society, it is inevitable that the aggravation of all forms of discrimination, encouraged by none other than the head of the federal executive power, will be experienced by people belonging to stigmatized human groups as a constant threat uttered by the highest executive authority of the country.

A discourse of this nature does not merely expound an ideology, but rather repeatedly and insistently incites people to disregard the human dignity of a good portion of their fellow citizens, not only of recognized groups or minorities but also of women, considering the misogynistic aspect of his statements, which can only be recognized as a reinforcement of the machismo that produces the numerous femicides recorded by the media.

This discourse inevitably becomes a kind of warning aimed at discriminated groups, who experience it as a threat to limit their freedom of expression and movement. Such experience is not unimportant, since continuous public incitement to human rights violations always has unpredictable consequences, which, as we have mentioned, are often lethal.

This restriction of social space for groups whose discrimination is fostered by an ever-increasing sense of fear of becoming a victim of aggression implies a limit to the exercise of their rights, which gives rise to an independent offense of human rights violation that effectively concurs (actual cumulation of offenses – “*concurso real*”, in Portuguese) with the health policy decision-making.

Therefore, we assert that the repeated discursive discrimination by the President of the Republic against social groups, including non-minority groups, constitutes a clear violation of the human rights of all persons discriminated against by the persistent presidential statements and speech, in accordance with international law, with a strong basis in Article 2 of the Universal Declaration of Human Rights and the articles of several international instruments and their respective regional systems in the same sense.

d. Health policy decision-making as a crime against humanity

d.1. Crime against humanity

Having thus affirmed the first act of human rights violations, we now move forward to consider the second act, which consists of the political decision to discard the social distancing, protection, and vaccination measures in the face of the COVID-19 pandemic, under the qualification of such act as a crime against humanity.

Although the concept of a crime against humanity is sometimes problematic, the act pointed out by the prosecution, in both its objective (i.e. highly lethal harmful result) and subjective (i.e. intentionally provoked) aspects, would fit any of its valid variants according to international law and jurisprudence. Without much difficulty, for example, it would fall under the definition of Article 7, 1, (k) of the Rome Statute: “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” It is therefore necessary to consider whether the objective and subjective aspects of this crime have been consummated.

d.2. The objective aspect: the massive violation of the right to life

It was sufficiently proven at the hearings that, after the first moment of scientific dissent that occurred with the outbreak of the pandemic, in the first months of the year 2020, scientists and the World Health Organization discarded the alleged policy aimed at provoking the so-called “herd immunity”. On the other hand, humanity had the centennial experience of the so-called “Spanish flu”, which ended through amplification of contagion, costing the world the lives of almost 5% of its inhabitants, when the planet's population was almost half of what it is today.

Under these conditions, Mr. Jair Bolsonaro, contrary to the policy advocated by some state and municipal governments in his own country, publicly argued that it was just an insignificant “little flu”, a discourse that was widely reproduced by all the domestic and foreign media.

At the same time, the President questioned the effectiveness of the vaccines and reaffirmed his confidence in the immunity that would be generated through virus spread and contamination, as well as minimized the importance of the number of deaths, maintaining that these occurred only in people affected by other diseases, and proposed a series of recommendations that went against the advice of all the scientists in the world.

Not satisfied, the President advised the use of chloroquine until mid-2021, when not only had the effectiveness of antimalarial drugs been sufficiently debunked in the world, but the health risks of their use had been highlighted. He publicly stated at that point that supposed clinical studies had demonstrated its effectiveness in reducing severe cases, which was scientifically false.

As a result of the aberrant health policy ordered by the federal government and defended publicly and intensely by its head, the president himself, a large number of avoidable deaths during the COVID-19 pandemic was produced. These deaths were

avoidable if measures advised by the WHO and scientists had been adopted. Comparing Brazil's figures with those of some other countries that opted for social distancing and self-isolation policies, as well as policies for the prevention of contagion and promotion of vaccination, about one hundred thousand deaths could have been avoided, as estimated in the reports presented before this Tribunal.

We can consider that some deaths in Brazil have not been registered and that the opposite has occurred in other countries, which makes it difficult to accurately compare the number of deaths. Even so, in any case, what has been proven beyond a shadow of a doubt is that tens of thousands of deaths could have been avoided, which is relevant for the purpose of legally classifying the conduct of the government under Mr. Jair Bolsonaro's control.

When confronted with crimes against humanity and genocide, deniers often argue that the number of victims is exaggerated. Discourses of this nature have been known in relation to both the Nazi and Armenian genocides, and so it is not surprising that it is repeated in the present case.

The disparity as to the exact quantification of the number of victims is no defense when it is established that mass murders occurred. There is no doubt that in this case tens of thousands of human lives were destroyed as a result of the decision of the government headed by Jair Bolsonaro, and it is indifferent to legal qualification purposes whether they amounted to or exceeded one hundred thousand deaths.

This violation of the right to life of several tens of thousands of people cannot be considered the normal result of government policy decisions that could not be judicially contested. It is true that policies are decided by governments and that, invariably, any political option may benefit some and harm others, but this is admissible as long as the alternatives at stake are reasonably debatable, which in the present case does not occur, given that global scientific opinion clearly delegitimized the Brazilian government's decision-making.

The choice politically implemented in the case was not between two possible health policies, because it was clear to everyone that, in terms of health, the policy of social distancing and self-isolation, prevention of contagion, and promotion of vaccination was advisable. In reality, the choice was based on weighing two values at stake: the lives of tens of thousands of people or economic slowdown, as Mr. Jair Bolsonaro himself stated, publicly confessing that he had opted for the economy.

From the point of view of international human rights law and any law that respects the dignity of the human person, it is unacceptable to use human beings as a means to other ends. Law is not at the service of any entity transcendent to the human being, be it “state”, “class”, “community of persons”, or the “economy”.

The economy itself must be at the service of the human being, and not the other way around. Any attempt to reduce the human being to an “object”, a “manageable thing” or an instrument, violates international law in general and international human rights law in particular, as well as any national republican legal order which – as such – presupposes the intangibility of human dignity and the rationality of governmental acts and decisions.

Given the hierarchy of values at stake, there is no point in dwelling on a possible claim of a “state of necessity,” since it is clear that the greater evil has been chosen, namely, the enormous suffering of human life and health.

Finally, to exhaust the question regarding the objective aspect of the act, it should be noted that it could be argued that the tens of thousands of fatal victims had not been individualized, i.e., that a policy was launched for an entire population, knowing that it would victimize a considerable number of people, but it could not be known in advance who would die.

Arguments of this nature have been made in relation to the crime of murder, although they are clearly refutable, since the person who shoots at a crowd does not know who will be killed either, but no one can doubt that it is an intentional homicide. If this same argument were transferred as a defense in the case of mass killings in a much larger population, the answer should be the same, except that in this case – as we shall see further ahead– it was known which sectors of the population would be most impacted and victimized.

d.3 The subjective aspect of the crime: the will to produce the result

The indictment claims that the act was committed with the “intention” to spread the pandemic. This statement requires more precision on the subjective aspect of the act since the reference to “intention” introduces confusion that prevents us from perceiving the central point of the subjectivity of the unlawful act committed in the case, which is that the mass death was committed with the direct will (intent) to produce it.

Any unlawful act can be either intentional or negligent. Negligence is excluded from the outset, since no one could ignore the lethal effects of this policy decision, which, after the first moment of bewilderment, all scientists and the WHO had alerted about. Consequently, the act that resulted in mass lethality cannot be attributed to carelessness or a simple breach of a duty of care, but its result was deliberate, i.e. it was clearly intentional.

The word “intention” (in German “*Absicht*”) has a different technical and even colloquial meaning: it always refers to something subjective that goes beyond the will to consummate the fact. There is an “intention” when, although one voluntarily wants to produce a result, one commits the act with the subjective disposition of obtaining something else (another result, some advantage, etc.).

What matters for the illegality of the act in the crime against humanity is that it was done with the will to achieve the result (intent), being irrelevant for the purposes of this qualification the “intention” that goes beyond the will to achieve the result.

According to this difference, the will was to prevent the circulation of the virus in the population and to facilitate and promote contagion, which necessarily implied the engendering of mass death. This will is sufficiently proven and even publicly and expressly confessed by Jair Bolsonaro, so as to perfectly configure the subjectivity necessary to affirm the existence of the crime against humanity.

As we have already pointed out, the “intention”, that is, what was subjectively intended beyond the result, is irrelevant for the purposes of this qualification. In this case, if one wishes to investigate “intention,” what is clear is that the act that was committed willfully (maliciously/with intent) had the “intention” to favor the economy at the cost of tens of thousands of human lives, and intention does not affect the aforementioned qualification in any way.

One could even invert the analysis and consider that the objective (purpose) was to favor the economy over human life, in which case it would be a kind of intent with necessary consequences since no one could have escaped the lethal cost of this objective. However, even with this approach to the case, inasmuch as the decision in favor of the economy was based on the certainty that the lethal result would be produced – since science and the WHO warned of the inevitable production of this result, it cannot be considered that this intent was “oblique” (*eventual*, in Portuguese), but rather direct, since the intent to achieve the necessary consequences of an act, according to all legal doctrine, is one of the forms of direct intent.

In any case, what cannot be doubted is that the mass deadly result was intentional (malicious), that is, that there was a clear intention to carry out the objective aspect of the offense.

e. The possible ideal coincidence with genocide

From the foregoing, it has been demonstrated that Bolsonaro has committed two illegal acts: (a) a grave violation of human rights by publicly inciting their violation against broad sectors of the Brazilian population who are discriminated against, and (b) a crime against humanity by opting for a health policy contrary to social distancing/isolation, prevention of contagion, and promotion of vaccination, which has intentionally led to the deaths of tens of thousands of people.

It remains to be examined whether, ideally, the legal qualification of genocide should be concomitant (concur ideally) with this second act.

The prosecution points to a series of very serious omissions and even possible infections amid the Indigenous populations of Brazil caused by government agents, delays in the vaccination schedule, and deadly results in greater proportion than in the rest of the population. These data would indicate behavior on the part of state authorities that could fall under the legal concept of genocide. With regard to the Black population in Brazil, what is reported is a higher mortality rate than the rest of the population, according to several reliable studies. These are two different situations, although in both cases the higher lethality of the pandemic is noted in both human groups.

Any action that seriously violates international human rights law – and in particular criminal conduct – takes place in a social, political, economic, and cultural context that must be taken into account for its legal assessment.

The contextual data that cannot be avoided in the present case are, in principle, the social and economic characteristics of Brazilian society, which has a high degree of social stratification and consequent concentration of wealth.

On the other hand, it is well known that, for many years, racism has been repeatedly denied in the official discourse of successive governments, to the point that a historical version has been cultivated that claims the prior existence of a supposed “friendly” coexistence between people of different ethnic characteristics, which is being reviewed with strong criticism by Brazilian intellectuals and sociologists.

Beyond any discussion, it is undeniable that racism is evident in social life in many aspects, such as, for example, selectivity in prison, with an evident predominance of Black people, which is contrasted by the opposite predominance of the white population in university life and in many other official spheres (in the judiciary, in diplomacy, etc.). Even the selectivity in access to higher levels of education led previous governments to adopt affirmative action measures.

With regard to the Indigenous populations, it is public knowledge that the nearly seven thousand page report prepared on behalf of the Ministry of the Interior in 1967, known as the “Figueiredo Report,” – elaborated by the prosecutor Jader de Figueiredo Correia – was recently recovered. This report gives an account of the aberrant acts committed between the 1940s and 1960s against Brazilian Indigenous peoples by landowners and by the government's Indigenous Protection Service. The report describes murder, torture, forced labor, sexual abuse, and even bacteriological attacks, with the extinction of some Indigenous populations.

Therefore, the neglect and aggression they suffered, especially for the appropriation of land, for decades and in particular during the military dictatorship that started in 1964, is far from something new. It is an old government decision for a policy of extinction or total assimilation, very similar to that practiced by some colonialists until the middle of the last century, as was the case of Australia, among many others. The data now provided by the prosecution corroborate the affirmation regarding the maintenance of this policy with the particularity that it would have been aggravated under the authorities of Jair Bolsonaro's administration.

In this context, it should be noted that the higher mortality rates in the two human groups invoking the qualification of genocide – and especially regarding Indigenous peoples – would not only respond to the general rule that in any society the most vulnerable suffer more from disasters, but that, beyond what this general rule indicates for a society with very marked social stratification, there would also be intentional or negligent actions and omissions on the part of the government.

In the present case, it would be necessary to specify, if not exactly, at least with closer approximation, the effect of the health policy adopted on these groups, without taking into account the effect that would result from their historical position of social subordination and, therefore, of greater social vulnerability.

The damage has been proven, but although the Bolsonaro administration knew that these groups would be the most affected, subjectively it would also be necessary to prove that, in adopting the irrational health policy that constitutes the crime against humanity that we consider as proven, it did so accompanied by the particular subjective element distinct from the intent (merely a will to accomplish the fact) of destroying or harming these groups and sectors of the population.

In this particular case and according to the legal definition of genocide, the mere will to produce the result is not sufficient; it must be accompanied by the subjective element of doing so with genocidal intention in relation to these particular groups. Unless proof of this intention can be deduced from the result itself – as in many cases – given the particularity of the present, it would be necessary to prove this particular subjective element in excess of pure intent or the will to produce the result.

As for authorship, given that these are very old discriminations, whose genesis can be traced, in the case of the Black population, to the scar left by slavery – abolished quite late in Brazil –, and that in the Indigenous populations can be traced to the genocidal advance of the “*Bandeirantes*” (literally, “flag-carriers”) towards the west, Mr. Jair Bolsonaro would only be responsible for a part of these policies, although he has done so with singular intensity in his administration. But it cannot be said that the irrational choice in the face of the COVID-19 pandemic was conceived especially as part of a broader criminal continuum that the evidence points to as a probable crime of genocide.

It should be noted that this Tribunal is cautious regarding the qualification of “genocide” in order to avoid its trivialization. On the other hand, a second normative classification in ideal cumulation of offenses based on this concept would add little in terms of its practical effects regarding the crime against humanity that has already been pointed out and that has been fully proven in terms of its health policy choice amid the COVID-19 pandemic. Among other factors, the aforementioned qualification is sufficient to establish the imprescriptibility for the prosecution of the criminal action. Rather, the Tribunal must rule very carefully in the present case to ensure that a premature qualification that might offer questionable argumentative flanks will not overshadow or cast doubt on the consistency of previous findings.

Therefore, in the present case, and without prejudice to the fact that additional information or clarification in the future could indicate otherwise, it can be concluded that, for the time being, it is prudent to avoid such a classification, at least in its strict legal sense.

Notwithstanding the foregoing, the Tribunal must not fail to point out that, at least ethically and sociologically, that is, outside the strict limits of legal definitions and especially with respect to Indigenous populations, there are serious and consistent indications that the Brazilian State is probably committing a kind of genocide as a continuous or “drop by drop” crime extending over at least a century, which should be seriously investigated, analyzed, and evaluated with more information by the relevant UN universal human rights bodies and the political and jurisdictional bodies of the Inter-American system.

In the same sense, the Tribunal considers that it would be appropriate, in light of the continuity of this State policy, that a claim be directed before the International Criminal

Court,

in order to settle, within the most appropriate jurisdictional body for the case, the possible genocidal classification of this conduct.

Similarly, the Tribunal cannot but deplore the enormous social abysses resulting from the strong concentration of wealth observed in Brazilian society and, in particular, the racist discrimination perceived in multiple aspects of its social life, recommending a shift in the policy publicly proclaimed by Bolsonaro and the consequent deconstruction of his governmental action, for the resumption of a progressive path in favor of equality and of adequate affirmative action measures to promote it.

4. Decision

The Permanent Peoples' Tribunal, meeting in session on September 1st, 2022, considering the multiple elements of testimonial and documentary evidence presented, as well as publicly available information, recognizes the conduct of Jair Messias Bolsonaro as:

- Consistent in having intentionally caused the death of several tens of thousands of people through his decision-making as head of the Federal Executive Branch, by rejecting the policy of social distancing/isolation, prevention, and vaccination against the COVID-19 pandemic, configures a crime against humanity.
- Consistent in permanently inciting violence and publicly and continuously stimulating inhumane discrimination against a large part of the Brazilian people, which constitutes a threat to these groups that results in a reduction of their social space and, consequently, a serious violation of human rights.

The Permanent Peoples' Tribunal also recommends that the bodies of the United Nation's International Human Rights System and of the Organization of American States pay special attention:

- To the Brazilian State's treatment of its Indigenous peoples, due to the possibility that it is committing a crime of genocide in a continuous and long-lasting manner over time;
- To the level of the Brazilian State's respect for Economic, Social, Cultural, and Environmental Human Rights, particularly regarding discrimination against the Black and *pardo* population.

In this last aspect, the Permanent Peoples' Tribunal also recommends:

- To pursue the case on the treatment provided by the Brazilian State against these groups before the International Criminal Court, given that it is the most suitable jurisdictional body for the adequate discussion, clarification, and qualification of this ongoing and long-lasting policy.

5. The Permanent Peoples' Tribunal judgment on Brazilian President Jair Bolsonaro

1. Unlike most judgments from our Permanent Peoples' Tribunal, this judgment refers to personal responsibility, that is, the criminal liability of a single person: the guilt of Brazilian President Jair Messias Bolsonaro for crimes against humanity.

The crime for which President Bolsonaro was responsible consists of a systematic violation of human rights, for having caused the deaths of tens of thousands of Brazilians due to the senseless policy he promoted regarding the COVID-19 pandemic. Contrary to the unanimous position of scientists around the world and the recommendations of the World Health Organization, Bolsonaro not only caused the Brazilian population not to adopt the measures of social distancing, isolation, protection, and vaccination designed to limit infection, but frequently created various obstacles to these measures, frustrating his own administration's attempts to establish policies in some way designed to protect the population from the virus. As a result of this conduct, it is estimated – based on a comparison between the number of deaths in Brazil and the number of deaths in other countries that have adopted the anti-COVID-19 policies recommended by all scientists – that approximately 100,000 deaths could have been avoided in Brazil if a more responsible policy had been chosen. Surely, this number is quite approximate: it may be a smaller number, but it may also be a larger number. What is certain is that President Bolsonaro's absurd health policy has caused tens of thousands of deaths.

Well, such conduct was classified, by the judgment, as a crime against humanity. Its definition, established according to Article 7, paragraph 1,(k) of the Statute of the International Criminal Court, understands that, in addition to murder, extermination, and other crimes, a crime against humanity can be perpetrated through all “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” President Bolsonaro's personal liability for a crime against humanity, the judgment argues, was proven under both the objective and subjective aspects of the crime.

First of all, the objective element has been proven beyond any doubt. Brazil is a presidential republic in which the president, according to Article 84 of the Brazilian Constitution, “shall have the exclusive power to exercise, with the assistance of the ministers of State, the higher management of the federal administration.” Therefore, it was the president who decided on the insane health policy questioned in the indictment. Bolsonaro – it has been proven, and is well-known, and has even been admitted by himself – has always minimized the COVID-19 disease, comparing it to a normal flu and recommending its treatment with chloroquine. In support of this homicidal policy, he invoked the reasons of supporting the economy, which obviously should not and cannot prevail over the right to life and the value and dignity of people.

However, in Bolsonaro's conduct, the subjective element of guilt is also present. In fact, it was common knowledge, after the first moments of perplexity and uncertainty, that only the measures of isolation, social distancing, and vaccination recommended by the WHO and the scientific community would have prevented the spread of the virus and,

therefore, the death toll. Bolsonaro's conduct was therefore intentionally moving towards the pandemic disaster because he was well aware of its result, that is, the enormously higher number of deaths that would follow from the failure to prevent the spread.

On the other hand, although the infection and deaths from COVID-19 primarily affected Indigenous populations and the Black population, the judgment did not recognize in Bolsonaro's conduct the expressly genocidal intent required for the configuration of genocide hypothesized by the prosecution, but recognized it as a “crime against humanity”, which is no less serious and equally imprescriptible. This does not exclude the racist substance of Bolsonaro's conduct, which was responsible, in addition to the aforementioned crime against humanity, for yet another crime: the serious violation of human rights, consisting of his countless expressions of racist contempt for Indigenous peoples and his numerous incitements to violence and racist, misogynist, homophobic, and classist hatred.

2. I would like to highlight, moreover, an important aspect of this judgment. It qualifies the health policies of failure to prevent pandemic contagion and spread – seriously harming peoples' rights – as a crime against humanity, for the fact that they caused the deaths of thousands of people as their clearly foreseeable, foreseen, and therefore desired effect. The judgment, therefore, calls all governing authorities who have openly and deliberately promoted these policies to respond to a crime against humanity. This is not a simple political responsibility. This is a true criminal liability.

It is an important reminder because policies to minimize the dangers posed by the pandemic – and therefore to promote infections – have not only been implemented or proposed by Brazilian President Bolsonaro, but also by several other populist leaders that have surged in recent years throughout the West. Our judgment will perhaps serve to make all these demagogues reflect and lead them to more responsible policies that must seriously respect human rights.

More generally, this judgment is valuable to denounce the criminal nature of all human rights violations carried out by governing authorities and their consequent criminal liability: not only for the homicidal policies that allowed the mass infection by COVID-19 but, in general, for all policies that are harmful to human rights. The arguments in this judgment for criminal (and not simply political) liability for having caused tens of thousands of deaths without limiting the spread of the disease, actually also apply to other massive human rights violations – such as denial of assistance, kidnapping of people, the closing of ports, naval blockades – implemented against migrants by several governing authorities or even proposed by those who are candidates for government positions. Showing the seriousness of these conducts by calling them by their name – i.e. crimes against humanity for which the governing authorities bear criminal liability – represents a sure step in combating human rights violations and a historical accomplishment of this judgment.